

EXECUTIVE PROGRAMME

SUPPLEMENT FOR TAX LAWS AND PRACTICE

MODULE I - PAPER 4

Disclaimer-

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TAX LAWS AND PRACTICE

Students are advised to read the study material along with this supplement as it will form part of the Study Material. The Lesson No. 17 & 18 of Tax Laws and Practice (Part B - Service Tax) need to be replaced with revised lessons 17 & 18 covered in this supplement.

Students appearing in December 2013 Examination shall note that all changes made by Finance Act, 2013, enacted on 10th May 2013 in Service Tax Laws are applicable for December, 2013 Examination, therefore, this Supplement will be usefull for them.

This supplement is updated upto 31st May 2013.

Lesson 17

Background, Administration and Procedural Aspects of Service Tax

LESSON OUTLINE

- Background
- Constitutional validity
- Limbs of service tax laws
- Administrative mechanism
- Taxability of services
 - Meaning of service
 - Declared services
 - Negative list of services
 - List of exemptions under mega notification
 - Place of provision of services rules
- Computation of service tax
- Lesson round up
- Self Test Questions

LEARNING OBJECTIVES

The Service tax was introduced on the recommendation of Dr. Raja Chelliah Committee on tax reforms. Initially it was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services. In a journey of about 19 years, it has seen various changes. Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services has been replaced with a negative list. There is paradigm shift in the way services are taxed. Now all services except as notified in Negative list or exemption list are subject to applicability of service tax.

At the end of this lesson, you will learn

- The principles underlying the introduction of service tax
- Constitutional background of service tax
- Administrative machinery of service tax
- Components which provides for governance of service tax law
- Place of Provision of Services Rules
- Applicable rate of service tax.

Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. A separate cell called the service tax cell, under each Commissionerates of central excise has been created for the purpose. Considering large number of assessees, CBEC has also established Service Tax Commissionerates in some cities.

BACKGROUND

As the economy grows and develops, the contribution of the services sector becomes more substantial. Hence, tax on services becomes substantial revenue for the Government. Although Service tax is a concept of the modern era where developed economies as well as developing economies find over 70% of their gross economic output coming from the service sector. Service tax was there in vogue even in the Mauryan period in India. Ms. Romila Thaper in her "Asoka and the Decline of the Mauryas", at page 72 (London 196, paperback edition, 1997, by Oxford) points out that services of weapon and implement makers were required to be provided to the state for a certain number of days in a year. This was a form of service tax in that period. But in the modern context, because of the increasing contribution of the service sector to the GDP of an economy, the importance of service tax is growing. As under the WTO agreements governments are required to reduce customs tariffs, governments are considering increase in service taxes revenues as a compensatory revenue generation mechanism. In terms of economics, tax on services is an indirect tax. This is because the burden of service tax can be passed on to the customer i.e., the recipient of the service. The service provider may also bear the burden of the tax by not passing or charging the same to a customer.

Example: How the burden of service tax shifted on the consumer?

Mr. Mohit is practicing Company Secretary, he represent before the Tax Authorities on behalf of Mr. Neeraj and raise a invoice of ₹1,00,000 plus service tax @12.36%.

Here, Mr. Neeraj is the client and he is required to pay the service tax of ₹12,360 in addition to the value of services. Subsequently Mr. Mohit deposit the sum to treasury of Central Government.

The ultimate outcome of this is that the burden of service tax is on the consumer.

The Tax Reforms Committee headed by Dr. Raja J Chelliah recognized the revenue potential of the service sector and recommended imposition of service tax on selected services (selective approach or positive list approach). Consequently the service tax was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services.

Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services has been replaced with a negative list. A negative list of services implies that there is, a list of services which are not be subject to service tax. Service tax will not be chargeable on the services mentioned in the negative list and which are exempted by issue of notification. This is in contrast to the earlier method of taxation of services where the law had provided definition for each taxable service and all other undefined services were outside the preview of Service Tax.

Reason for Imposition of Service Tax:

In *ALL INDIA FEDN. OF TAX PRACTITIONERS v. UNION OF INDIA 2007 (7) S.T.R. 625 (S.C.)* the Hon'ble Supreme Court of India has mentioned the following reasons for the imposition of service tax.

Service tax is an indirect tax levied on certain services provided by certain categories of persons including companies, association, firms, body of individuals etc. Service sector contributes about 64% to the GDP. Services" constitute heterogeneous spectrum of economic activities. Today services cover wide range of activities such as management, banking, insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector. Service sector is today occupying the centre stage of the Indian economy. It has become an Industry by itself. In the contemporary

world, development of service sector has become synonymous with the advancement of the economy. Economics hold the view that there is no distinction between the consumption of goods and consumption of services as both satisfy the human needs.

In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes. Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word “goods” has to be understood in contradistinction to the word “services”. Customs and excise duty constitute two major sources of indirect taxes in India. Both are consumption specific in the sense that they do not constitute a charge on the business but on the client. However, by 1994, Government of India found revenue receipts from customs and excise on the decline due to W.T.O. commitments and due to rationalization of duties on commodities. Therefore, in the year 1994-95, the then Union Finance Minister introduced the new concept of “service tax” by imposing tax on services of telephones, non-life insurance and stock-brokers. That list has increased since then. Knowledge economy has made “services” an important revenue-earner.

At this stage, we may refer to the concept of “Value Added Tax” (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.

In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax.

As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Therefore, for our understanding, broadly “services” fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandap Keepar etc.. Performance based services are services provided by service providers like stock-brokers, practicing company secretaries, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents etc..

Government of India in order to tap new areas of taxation and to identify the hidden one appointed Tax Reforms Committee under the Chairmanship of Dr.Raja J Chelliah in August, 1991. The recommendations made by the Committee were accepted and the Service Tax was introduced in the Budget for 1994-95 through the Finance Act, 1994. Under the said enactment, Service Tax is the tax on notified services provided or to be provided. After its introduction, the constitutional validity of the services taxed by the Central Government was challenged before the Constitution Bench of this Court which took the view that the Central Government derived its authority from Entry 97 of List I of the Seventh Schedule to the Constitution for levying tax on services provided.

CONSTITUTIONAL VALIDITY

As per Article 246 of the Constitution of India, law can be enacted by Parliament or the State legislature, if such power is given by the Constitution of India.

Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law.

Schedule VII divides this subject into three categories –


- (a) Union list (only Central Government has power of legislation)
- (b) State list (only State Government has power of legislation)
- (c) Concurrent list (both Central and State Government can pass legislation).

Entry 97 of the Union list is the residuary entry and empowers the Central Government to levy tax on any matter not enumerated in state list or the concurrent list.

In 1994, the service tax was levied by the central government under the power granted by the entry 97 of the union list.

Thereafter in 2003 the government has passed the constitution (88th Amendment Act, 2003) which provides for the levy of service tax by the centre through the insertion of article 268A to the constitution. In addition to article 268A, entry 92C has been inserted in the union list to make the enactment relating to service tax a subject matter of union list.

Students may note that entry No.92C has not yet been made effective by the parliament and service tax is still governed by the entry 97 of the union list.



Test Your Knowledge

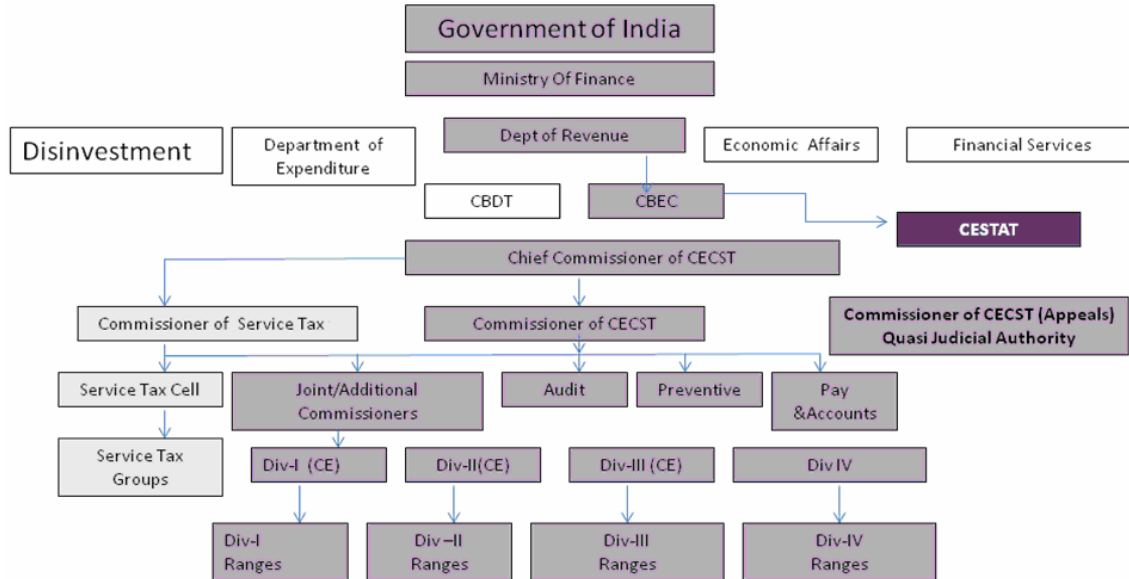
1. When service tax was first introduced in the year 1994, it was levied on a uniform basis.

- True
- False

ADMINISTRATIVE MECHANISM

Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. A Central Excise Commissionerate establishes a separate cell called the service tax cell for the purpose of administration of Service Tax within its jurisdiction. Considering large number of assesseees, CBEC has also established Service Tax Commissionerates in some cities. There are six Commissionerates located at metropolitan cities of Delhi, Mumbai, Kolkata, Chennai, Ahmadabad and Bangalore which deal exclusively with work related to Service Tax. These Commissionerates are supervised by the jurisdictional Chief Commissionerate of Central Excise.

Administrative Structure – Service Tax



Division in charge : Assistant / Deputy Commissioner **Range in Charge:** Superintendent

NOTES:

CESTAT = Custom Excise Service Tax Appellate Tribunal

CECST = Central Excise, Customs & Service Tax

Div = Division

When separate Service Tax Commissioner is Constituted, then Commissioner of CECST, Commissioner of CEC, Service Tax Cell Comes under Service Tax Commissioner.

When separate Service Tax Commissioner is not Constituted, then Service Tax Cell Comes under Commissioner of CECST.

The above Chart is illustrative, as under the Commissioner of CECST or Commissioner of CEC there are other functional departments like Adjudication, Refunds, Technical Cell, Laboratory, Establishment.

Test Your Knowledge



2. Service Tax is administered by

- (a) CBEC
- (b) CBDT
- (c) Central Government
- (d) None of the above

TAXABILITY OF SERVICES

Service Tax is levied vide Finance Act, 1994 (the Act). The Finance Act, 1994 applies all over India except the state of Jammu & Kashmir.

With effect from 1st July 2012, a new charging Section 66B has been inserted by the Finance Act 2012. Section 66B provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

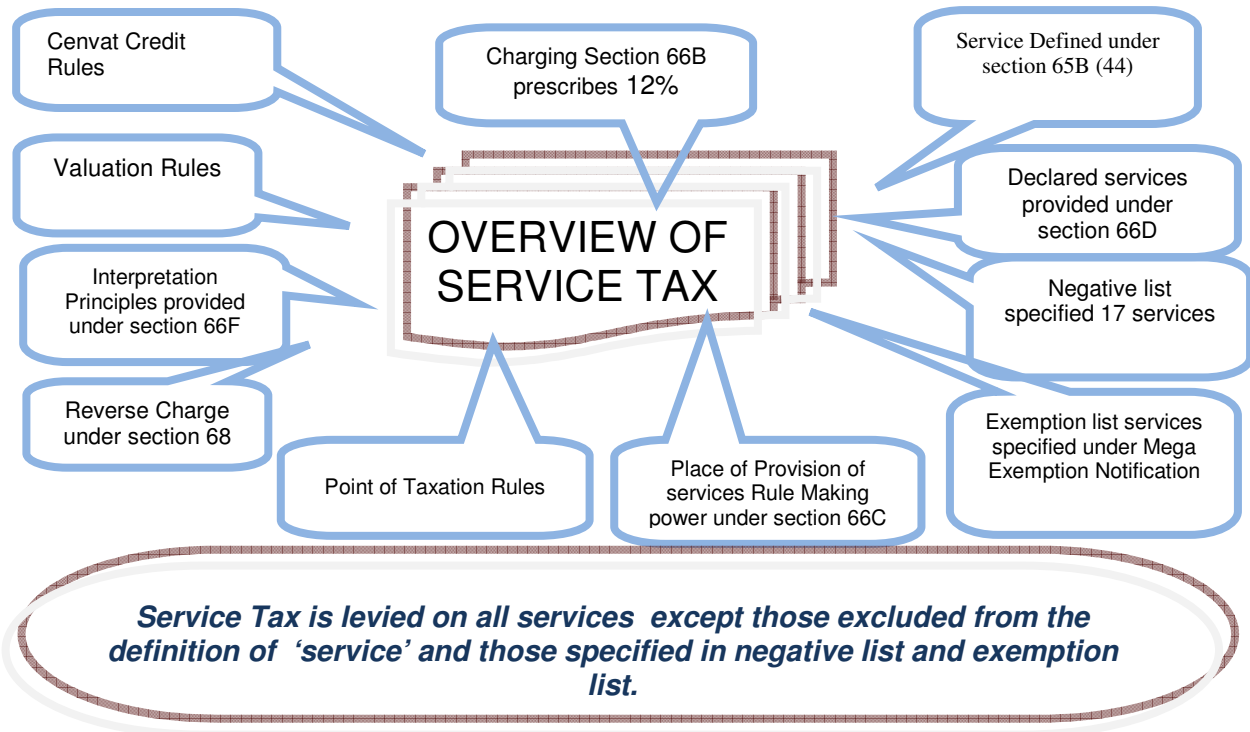
The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability. Moreover, only services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 ('PPSR') are prescribed and with this Import of Services and Export of Services Rules has been rescinded.

LIMBS OF SERVICE TAX LAWS

The various limbs of the Service Tax Law are:

- Chapter V and VA (SECTIONS 64 TO 98) of the Finance Act, 1994 as amended by successive Finance Acts;
- As per Section 83 of the Finance Act, 1994 the provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section 2 of 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D 38A and 40. Certain Sections of Central Excise Act, 1944 are also made applicable to the Service Tax matters.
- Service Tax Rules, 1994,
- Service Tax (Advance Ruling), Rules 2003;
- The CENVAT Credit Rules, 2004;
- Service Tax (Advance Rulings) Rules, 2003
- Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005;
- Service Tax (Registration of Special category of persons) Rules, 2005;
- Service Tax (Determination of Value) Rules, 2006;
- Service Tax (Provisional Attachment of Property) Rules, 2008;
- Service Tax (Publication of Names) Rules, 2008;
- Service Tax Return Preparer Scheme, 2009;
- Point of Taxation Rules, 2011;
- Indirect Tax Ombudsman Guidelines, 2011;
- Service Tax (Settlement of Cases) Rules, 2012;
- Service Tax (Compounding of Offences) Rules, 2012;
- Service Tax (Removal of Difficulty) Order, 2012;
- Place of Provision of Services Rules, 2012.

Further, Service Tax Notifications issued by the Government is also an important limb of Service Tax law. The Central Board of Excise and Customs also issues Circulars on service tax and on the basis of Circulars jurisdictional Commissionerates of Central Excise issues Trade Notices for the guidance of the assesseees on service tax matters.



MEANING OF SERVICE

The Finance Act, 2012 has also defined a term "Service" for the first time. In other words, from June 1994 to June 2012, the Finance Act, 1994 was not containing a definition of the term Service.

Clause (44) of Section 65B of the Act has defined a term Service as under:

"Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1 — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

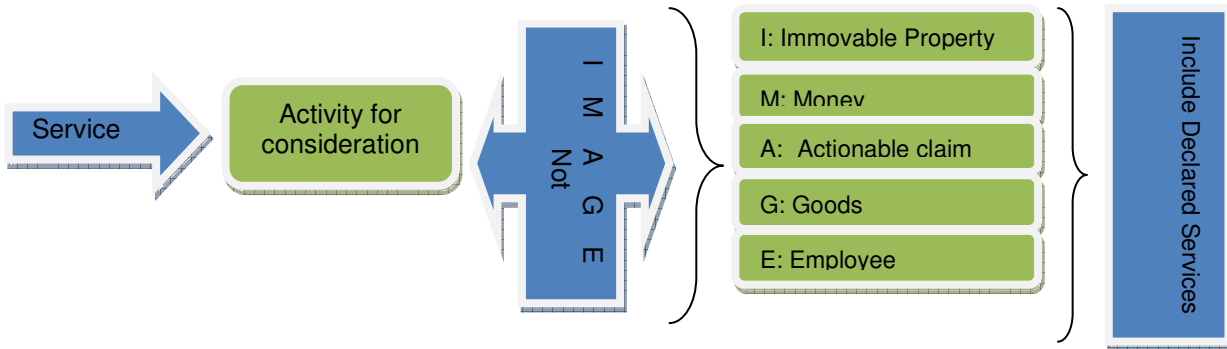
Explanation 2— For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

Explanation 3— For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non - taxable territory shall be treated as establishments of distinct persons.

Explanation 4— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

Example: Service of an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members up to an amount of ₹5,000 per member per month by way of reimbursement of charges or share of contribution is exempt from service tax. Where RWA is working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) Of Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.



Accounting Codes for Services

Service Tax accounting codes must be mentioned in the Service Tax Payment Challan (GAR 7). In case of Multiple service Provider (a service provider rendering more than one taxable service), amount attributable to each such service along with the concerned accounting codes should be mentioned clearly in the column provided for this purpose in the GA R 7 Challan.

Accounting code for the purpose of payment of service tax under the Negative List approach [“All Taxable

Services” – 00441089] was prescribed vide Circular 161/12/2012 dated 6th July, 2012. However, for statistical analysis suggestions were received for restoration of old accounting codes and to provide list of description of services to the taxpayers for obtaining registration. After examining the suggestions old accounting code list has been restored and service specific accounting codes for the purpose of registration and payment of service tax is provided in annexure to the Circular No.165/16/2012 –ST.

Note: To provide an idea about the accounting codes the circular along with annexure containing the accounting codes are given as annexure at the end of this Supplement.

(A) DECLARED SERVICES

Section 66E specify nine activities or transactions which are declared to be covered as ‘service’. Such activities include:-

- (a) renting of immovable property
- (b) construction of a complex.
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments
- (h) service portion in the execution of a works contract
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity

Para No. 3.4.1 of Taxation of Services – An education Guide dated 20.06.2012 has given the following test to determine whether an activity is a taxable service:

STEP 1: To determine whether service is being provided by you:

S.NO.	QUESTION	Provide Your Answer
1	Am I doing an activity (including, but not limited to, an activity Specified in section 65E of the Act) for another person*?	YES
2	Am I doing such activity for a consideration?	YES
3	Does this activity consist only of transfer of title in goods or immovable property by way of sale, gift or in any other manner?	NO
4	Does this activity constitute only a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution?	NO
5	Does this activity consist only of a transaction in money or actionable claim?	NO

6	Is the consideration for the activity in the nature of court fees for a court or a tribunal?	NO
7	Is such an activity in the nature of a service provided by an employee of such person in the course of employment?	NO
8	Is the activity covered in any of the categories specified in Explanation 1 to clause (44) of section 65B of the Act	NO

If the answer to the above questions is as per the above answers in column 3 of the table above THEN you are providing a service.

STEP 2: To determine whether service provided by you is taxable

If you are providing a 'service' (Step 1) and then pose the following Questions to yourself-

S.NO.	QUESTION	ANSWER
1	Have I provided or have I agreed to provide the service?	Yes
	Have I provided or have I agreed to provide the service in the taxable territory?	Yes
2	Is this activity entirely covered in any of the services described in the negative list of services contained in section 66D of the Act?	No

If the answer to the above questions is also as per the answers given in column 2 of the table above then you are providing a 'taxable service'.

(B) NEGATIVE LIST OF SERVICES

A Negative List approach to taxation of services has been introduced vide sections 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services is effective from July 1, 2012.

Section 66D specify the following list of services under the negative list: –

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere –
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government.
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.
 - (iii) transport of goods or passengers.
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

- (b) services by the Reserve Bank of India.
- (c) services by a foreign diplomatic mission located in India.
- (d) services relating to agriculture or agricultural produce by way of—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing.
 - (ii) supply of farm labour.
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market.
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use.
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce.
 - (vi) agricultural extension services.
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- (e) trading of goods.
- (f) any process amounting to manufacture or production of goods.
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
- (h) service by way of access to a road or a bridge on payment of toll charges.
- (i) betting, gambling or lottery.
- (j) admission to entertainment events or access to amusement facilities.
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility.
- (l) services by way of –
 - (i) pre-school education and education up to higher secondary school or equivalent.
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.
 - (iii) education as a part of an approved vocational education course.
- (m) services by way of renting of residential dwelling for use as residence.
- (n) services by way of –
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount ;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
- (o) service of transportation of passengers, with or without accompanied belongings, by
 - (i) a stage carriage

- (ii) railways in a class other than –
 - (A) first class or
 - (B) an airconditioned coach
- (iii) metro, monorail or tramway
- (iv) inland waterways
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India and
- (vi) metered cabs, radio taxis or auto rickshaws
- (p) services by way of transportation of goods–
 - (i) by road except the services of–
 - (A) a goods transportation agency; or
 - (B) a courier agency
 - (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India or
 - (iii) by inland waterways
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

(C) LIST OF EXEMPTIONS UNDER MEGA NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, the Central Government has issued Notification No. 25/ 2012 ST dated 20th June 2012 (Mega Exemption Notification) exempting the following taxable services. This notification has come in to effect from 1st day of July, 2012.

1. Services provided to the United Nations or a specified international organization.

“Specified international organization” means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

The illustrative list of such organizations has been provided by Para No.7.1, Taxation of Services – An Education Guide dated 20.06.2012 as follows:

- *International Civil Aviation Organisation*
- *World Health Organisation*
- *International Labour Organisation*
- *Food and Agriculture Organisation of the United Nations*
- *UN Educational, Scientific and Cultural Organisation (UNESCO)*
- *International Monetary Fund (IMF)*
- *International Bank for Reconstruction and Development*
- *Universal Postal Union*
- *International Telecommunication Union*
- *World Meteorological Organisation*

- *Permanent Central Opium Board*
- *International Hydrographic Bureau*
- *Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants*
- *Asian African Legal Consultative Committee*
- *Commonwealth Asia Pacific Youth Development Centre, Chandigarh*
- *Delegation of Commission of European Community*
- *Customs Co-operation Council*
- *Asia Pacific Telecommunity*
- *International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)*
- *International Centre for Genetic Engineering and Biotechnology*
- *Asian Development Bank*
- *South Asian Association for Regional Co-operation*
- *International Jute Organisation, Dhaka, Bangladesh*

2. Health care services by a clinical establishment, an authorized medical practitioner or para-medics.

The terms health care services are defined as follows:

“Health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes

- *services by way of transportation of the patient to and from a clinical establishment, but does not include:*
- *hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;*

As per para 7.2.1 of Taxation of services –An Education Guide the services provided in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- *Allopathy*
- *Yoga*
- *Naturopathy*
- *Ayurveda*
- *Homeopathy*
- *Siddha*
- *Unani*
- *Any other system of medicine that may be recognized by central government*

“clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

“authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

Para 7.2.2. of Taxation of services- An Education Guide describes Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

In short, the health care services provided by a clinical establishment, an authorized medical practitioner and paramedics shall be exempt.

3. Services by a veterinary clinic in relation to health care of animals or birds.

4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities.

“Charitable activities” means activities relating to -

(i) public health by way of -

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

5. Services by a person by way of-

(a) renting of precincts of a religious place meant for general public; or

(b) conduct of any religious ceremony.

In this case the exemption is provided to the activity of letting out on rent of areas surrounding, or in the compound of a religious place.

For this purpose, the following are defined as;

“Religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

“General public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

6. Services provided by-

- (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year.

Arbitral tribunal defines as “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

The definition as provided in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 read as; “arbitral tribunal” means a sole arbitrator or a panel of arbitrators”

Further, Business entity is defined in section 65B of the Finance Act, 1994 as ‘any person ordinarily carrying out any activity relating to industry, commerce or any other business.

Thus, services provided by arbitral tribunal to a business entity having turnover of more than ₹ 10 lakhs in the preceding financial year would not be exempt.

- (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services ;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

“Advocate” has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

The definition of advocate has been defined in clause (a) of subsection (1) of section of the Advocates Act, 1961 as; “advocate means an advocate entered in any roll under the provisions of this Act”

“legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

Thus, any services provided by such advocates/firms in fields other than legal services would be taxable. Such services can include services relating to mergers and acquisitions, due diligence etc.

- (c) a person represented on an arbitral tribunal to an arbitral tribunal.

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India.

In order to promote development of new drugs, exemption is provided to testing and analysis of such new drugs.

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports.

Vide Circular No. 164/15/2012 S.T, dated 28-08-2012, it has been clarified that no service tax is leviable on vocational education/training/skill development courses (VEC) offered by the Government (Central Government or state Government) or local authority themselves. Also in case of such courses offered by an entity independently established by the Government under the law as a society or any other similar body, it has been clarified that the words “recognised by an entity established under a central or state law including

delegated legislation, for the purpose of granting recognition to any education course including a VEC

9. Services provided to an educational institution in respect of education exempted from service tax, by way of,-

- (a) auxiliary educational services; or
- (b) renting of immovable property.

Here, exemption is provided to

- to an educational institution
- in respect of education
- which is exempt from levy of service tax
- by way of auxiliary educational services
- by way of renting of immovable property.

For this purpose 'auxiliary educational services' are defined as follows:

“auxiliary educational services” means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

10. Services provided to a recognised sports body by-

- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
- (b) another recognised sports body.

“Recognized sports body” means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

For this purpose 'Recognized sports body' is defined as follows:

11. Services by way of sponsorship of sporting events organised,-

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act.

For this purpose 'governmental authority' is defined as follows:

“governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
- (e) a structure meant for funeral, burial or cremation of deceased.

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

“Original works” means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

Definition as provided in such rules is as follows:

Original works means:

- (i) All new constructions;
- (ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

“residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

“single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-

- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
- (b) of cinematograph films for exhibition in a cinema hall or cinema theatre.

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador.

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent.

“Declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

- (a) omitted by Finance Act, 2013 as enacted on 10th May 2013;
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;

- (d) omitted;
- (e) omitted;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) railway equipments or materials;
- (h) agricultural produce;
- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (j) chemical fertilizer and oilcakes.

21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-

- (a) agricultural produce;
- (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
- (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- (e) chemical fertilizer and oilcakes;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments;

“Goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

22. Services by way of giving on hire -

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods.

“State transport undertaking” has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

For clarification, Taxation of services –An Education Guide dated 20.06.2012, provides the following:

7.11.5 Is giving of a bus on hire to any person liable to tax?

Giving on hire a bus to a state transport undertaking is exempt from service tax. If the bus is given on hire to a person other than a state transport undertaking, it will be taxed.

23. Transport of passengers, with or without accompanied belongings, by -

- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West

Bengal;

- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) ropeway, cable car or aerial tramway.

“contract carriage” has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

24. Omitted;

25. Services provided to Government, a local authority or a governmental authority by way of -

- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
- (b) repair or maintenance of a vessel.

26 Services of general insurance business provided under following schemes-

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme.

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
- (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee.

“incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology,

Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

“trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

For clarification Taxation of services – An Education Guide dated 20.06.2012, provides the following:

7.11.9 I am a Resident Welfare Association (RWA). The members contribute an amount to RWA for holding camps to provide health care services to poor men and women. Am I required to pay tax on contribution received from members?

No. You are not required to pay service tax on the contribution received as you are carrying out any activity (holding camps to provide health care services) which is exempt from the levy of service tax. If contribution is for carrying out an activity which is taxable, you are required to pay service tax.

29. Services by the following persons in respective capacities -

- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

“sub-broker” has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

“authorised person” means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

“commodity exchange” means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

“distributor or selling agent” has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery-organising State;

“business facilitator or business correspondent” means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

“banking company” has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934(2 of 1934);

“general insurance business” has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

“insurance company” means a company carrying on life insurance business or general insurance business;

“life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

“rural area” means the area comprised in a village as defined in land revenue records, excluding-

the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government;

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:

2.8.12 Would recharge vouchers issued by service companies for enabling clients/consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be ‘actionable claims’?

No. Such recharge vouchers do not create a ‘beneficial interest’ in a moveable property but only enable a person to enjoy a particular service.

7.11.11 Whether the exemption provided in the mega -exemption to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?

As per clause (1) of section 66F reference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service ., which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are ‘services by way of construction of roads etc’ and not ‘services in relation to construction of roads etc’. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.

30. Carrying out an intermediate production process as job work in relation to -

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

“Appropriate duty” means duty payable on manufacture or production under a Central Act or a State Act, but shall not include ‘Nil’ rate of duty or duty wholly exempt;

“Principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:

Para No. 7.11.16 Footwear Association of India is organizing a business exhibition in Germany for footwear manufacturers of India. Is Footwear association of India required to pay service tax on services to footwear manufacturers?

No. The activity is exempt from service tax.

32. Services by way of making telephone calls from -

- (a) departmentally run public telephone;
- (b) guaranteed public telephone operating only for local calls; or
- (c) free telephone at airport and hospital where no bills are being issued.

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:

Para No. 7.11.13 Whether service tax is leviable on telephone services rendered by M/s. BSNL through Village Panchayat Telephone (VPT) with local call facility, as M/s. BSNL is a public sector unit and telephones run by it cannot be treated as ‘departmentally run telephones’?

As per Sl. No. 32 of the mega-exemption Notification in addition to exemption to ‘departmentally run telephones’ there is exemption for ‘Guaranteed Public Telephone operating only for local calls’ also. Village Public Telephones (VPTs) with facility of local calls (without 9 dialing facility or STD facility) run by BSNL would fall under the category of ‘Guaranteed Public Telephone operating only for local calls’.

33. Services by way of slaughtering of animals.

34. Services received from a provider of service located in a non- taxable territory by -

- (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
- (c) a person located in a non-taxable territory.

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following example:

Para No. 7.11.17 I am resident in Jammu and Kashmir and planning to construct a property in Delhi. I have got the architectural drawings made from an architect who is also resident in Jammu and Kashmir. Am I liable to pay service tax on architect services?

Solution: No. Even though the property is located in Delhi- in a taxable territory- your architect is exempt from service tax as both the service provider and the service receiver is in a non-taxable territory.

35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material.

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948).

37. Services by way of transfer of a going concern, as a whole or an independent part thereof.

As per Taxation of services –An Education Guide dated 20.06.2012, 'transfer of going concern' means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

(D) PLACE OF PROVISION OF SERVICES RULES

Service Tax Is Destination Consumption Based Tax

Service Tax is a Value Added Tax (VAT) and is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. This principle is more or less universally applied.

In terms of this principle, exports are not charged to tax, as the consumption is outside the taxable territory, and services are taxed on their importation into the taxable territory.

However, most of the services are intangible in nature; the determination of place of their consumption is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person situated in Delhi may buy a ticket on line from a service provider located outside India, say Delta Airline, USA for a journey from Mumbai to New York, wherein part of the service will be provided on Indian land mass or in taxable territory (the territory of India including territorial waters of India extending up to 12 nautical miles (under International Sea Act). Hence services provided beyond the territorial waters of India are not liable to service tax as the provisions of the service tax have not been extended beyond India). On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically through internet such as software services, web based services, software maintenance services. As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of harmonization with international practices in order to avoid both the double taxation as well as double non-taxation of services.

It is also a common practice to largely tax services provided by business to other business entities, based on the location of the customers and other services from business to consumers based on the location of the service provider. Since the determination in terms of above principle is not easy, or sometimes not practicable, nearest proxies are adopted to provide specificity in the interpretation as well as application of the law.

Function of Place of Provision of Services Rules, 2012

These rules are primarily meant for:

- (a) The assessee who deal in cross-border services (from taxable territory to non taxable territory or from non taxable territory to taxable territory).
- (b) Those assessees who have operations with suppliers or customers in the state of Jammu and Kashmir.
- (c) Service providers operating within India (within the taxable territory) from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations.
- (d) Determining services that are wholly consumed within a SEZ, to avail the outright exemption from service tax.

Basic Framework

Place of Provision of Services (POPS) Rules, 2012 are comprehensive set of rules which provides for whether a service has been provided in taxable territory or not. The concept of Export or Import service has been replaced with provision of service in taxable or non taxable territory and therefore no separate set of rules for Export and Import of services exists. The rules for determination of import of services has done away with and export of services are now determined with Rule 6A of Service Tax Rules, 1994.

How the POPS Rules, 2012 shall apply

The answer to this question is provided in Para 5.2.1. of Taxation of Services – An Education Guide dated 20.06.2012 as follows:

As stated earlier, in terms of section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following

questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision of the service in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.
4. Is the provider 'located' in the taxable territory? If yes, he will pay the tax.
5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.
6. Is the service receiver an individual or government receiving services for a non business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted. If not, he is liable to pay tax.

Before moving to the Rules for determining the Place of provision of Services Rules, the understanding of the following term is very important.

Taxable territory has been defined in sub-section 52 of section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e. whole of India excluding the state of Jammu and Kashmir.

“Non-taxable territory” is defined in sub-section 35 *ibid* accordingly as the territory other than the taxable territory.

“India” is defined in sub-section 27 of section 65 B, as follows:

“India” means—

- (a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
- (c) the sea-bed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and
- (e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

Order of Application of POPS, Rules 2012

Rule 14 of POPS rules, provides that rules should be interpreted in reverse order, means rules which comes last in order will be considered first and if that is not applicable then go to the second last and so on. These rules should be applied in the reverse order (from below to above) i.e. in case rule 8 is applicable no other rule prior to this rule shall be applicable.

An illustration is given in Para 5.14.1 of Taxation of Services – An Education Guide dated 20.06.2012 as follows:

Illustration 1

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business

establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Illustration 2

For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Main Rule: Rule 3

Rule 3 of the POPS rules provide the basic rule (except provided otherwise in the POPS Rules). As per this rule, the place of provision of services shall be:

- the location of the recipient of service
- in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

The principal effect of this rule is that:-

- A. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.
- B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

Rule 2 defines 'location of service provider' as follows:

(h) "location of the service provider" means-

- (a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- (b) where the service provider is not covered under sub-clause (a):
 - (i) *the location of his business establishment; or*
 - (ii) *where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or*

- (iii) where services are provided from more than one establishment, whether business or
- (iv) fixed, the establishment most directly concerned with the provision of the service; and in the absence of such places, the usual place of residence of the service provider.

Rule 2 defines ‘location of service receiver’ as follows

- (i) “Location of the service receiver” means:-
 - (a) where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
 - (b) where the recipient of service is not covered under sub-clause (a):
 - (i) the location of his business establishment; or
 - (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
 - (iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:- For the purposes of clauses (h) and (i), “usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:- For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

Who is a service receiver?

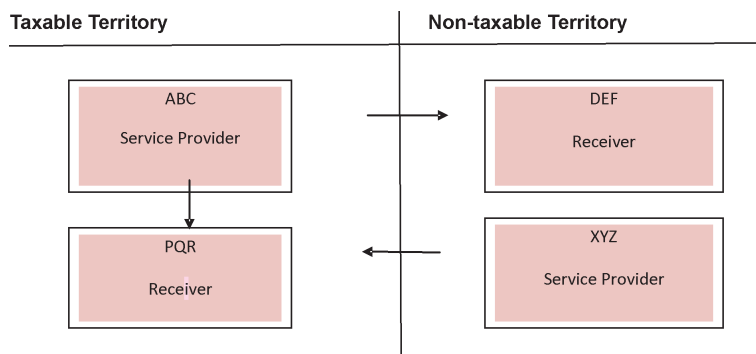
Para 5.3.3 of Taxation of Services – An Education Guide dated 20.06.2012 provides as follows:

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Following illustration will make this clear:-



A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a non-taxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as “tax shift”).

RATE OF SERVICE TAX

The rate of service tax is mentioned in the charging section. As per the new charging section 66B, as stated earlier, service tax is leviable @12% on the value of taxable services. Further, as per section 91 read with section 95 of the Finance (No. 2) Act, 2004 Section education cess is leviable @ 2% and as per section 136 read with section 140 of the Finance Act, 2007 secondary and higher education cess is leviable @ of on the amount of Service Tax levied. Education cess of 2% and secondary and higher education cess of 1% is in the nature of sur tax on service tax.

Computation of Service Tax

If a person renders a taxable service of the value of ₹ 500, the service tax @12% will be ₹ 60. The Education cess of 2% on ₹ 60 will be ₹ 1.20 and secondary and higher education cess of 1% will be ₹0.60. Thus, a total tax will be ₹ 61.80.

ROUNDING OFF OF SERVICE TAX

The provisions of Section 37D of the Central Excise Act, 1944 are applicable to Service Tax Law by virtue of Section 83 of Finance Act, 1994 (as amended), provide that the amount of service tax, interest, penalty, fine or any other sum payable and the amount of refund or any other sum due, under the provisions shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

LESSON ROUND UP

- The Tax Reform Committee headed by Dr. Raja C. Chelliah recognised the revenue potential of service sector and recommended imposition of service tax on some select services.
- Entry No. 92C has not yet been made effective by the parliament and service tax is still governed by the entry 97 of the union list.
- The Central Board of Excise and Customs has been entrusted with the task of administration of service tax.
- The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability.
- With the introduction of Negative list approach the services which are out of the purview of negative list and mega exemption list are chargeable to service tax.
- Services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 ('PPSR') are prescribed and with this Import of services and export of services rules has been rescinded.

- Service tax is charged @12% plus Education cess @2% and SHEC @ 1%.
- Service tax, interest, fine, penalty or any other sum payable shall be rounded off to the nearest of rupee one.

SELF TEST QUESTIONS

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

TRUE AND FALSE

1. Service tax in India is levied under a separate enactment.
2. The Central Excise Officer is empowered to impose penalty under service tax.
3. The Central Government has exempted some of the taxable services.
4. Service tax is administered by service tax department.
5. Service tax has been imposed by amending Chapter-VI of the Finance Act, 1994.
6. Service tax is applicable on whole India excluding Jammu and Kashmir.
7. Rate of service tax payable for the financial year 2012-13 is 10 per cent.

ELABORATIVE

1. Describe briefly the scope of service tax in India.
2. Define the following:
 - (a) Service;
 - (b) Service tax.
3. Describe briefly the mechanism in administering service tax in India.
4. Explain in brief the steps for calculation of service tax under the new regime.

ANSWERS/HINTS

True and False

1. False; 2. True; 3. True; 4. False; 5. False; 6. True; 7. False.

Test Your Knowledge

1. True
2. CBEC

SUGGESTED READINGS

1. Taxation of Services – An Education Guide dated 20.06.2012
2. Service Tax Manual: Taxmann
2. Dr. V.K. Singhania: Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
3. Girish Ahuja and Ravi Gupta: Systematic Approach to Income-tax and Sales-tax; Bharat Law House, New Delhi.

Lesson 18

LEVY, COLLECTION AND PAYMENT OF SERVICE TAX

LESSON OUTLINE

- Registration Charge of Service tax
- Service Tax Registration of Special Category of Persons
- Payment of service tax
- Incidence to pay Service Tax
- Point of Taxation Rules, 2011
- Adjustment of Service Tax
- Interest on delayed payment of service tax u/s 75
- Records to be maintained
- E-filing of Service Tax Returns
- Penalties and Prosecution
- Waiver or reduction of penalty
- Abatement in Service Tax
- Role of Company Secretary
- Lesson Round Up
- Self Test Questions

LEARNING OBJECTIVES

This chapter covers the procedural as well substantive provisions relating to levy, collection and payment of service tax and relevant CENVAT Credit Rules 2004. It also covers the registration aspects, filing aspects including e-filing, appeal matters including appeal before Appellate Tribunal. The new regime of service tax i.e. levy of service tax on negative list approach have been discussed in the previous lesson.

At the end of this lesson, you will learn :

- What is the basis of charge for service tax?
- What are the circumstances under which service tax is paid by the receiver of services?
- When the liability for payment of service tax arises?
- What is the registration procedure for service provider?
- How to file service tax return?
- What are the Penal provisions for payment/non-payment of service tax?
- What is role of Company Secretaries?

CBEC has rolled-out a new centralized, web-based and workflow-based software application called Automation of Central Excise and Service Tax (ACES) for on-line filing/ uploading of documents and other activities under Central Excise and Service Tax.

A Certified Facilitation Centre (CFC) under ACES project is a facility, other than the physical front offices or Facilitation Centres of CBEC, which may be set-up and operated by a Company Secretary in practice to whom a certificate is issued under the ACES project, where the assessees of Central Excise and Service Tax can avail the facility to file their returns and other documents electronically on payment of specified fees.

REGISTRATION

Section 69 of the Finance Act, 1994 specifies the persons who are required to get themselves registered under this Act. Every person liable to pay service tax to get registered with designated Superintendent of Central Excise.

An application for registration is required to be made to the Superintendent of Central Excise in Form ST-1. This is to be made within a period of thirty days from the date on which the service tax is leviable on him and where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

As stated earlier, a person can become liable to pay tax both as service provider as well as service receiver. Therefore, when a service receiver is liable to pay service tax he is also required to get himself registered.

Procedure for Registration

With effect from 1st June 2010 vide notification no.20-21/2010 a person shall make an online application for registration. Online registrations have been made mandatory for all the assesseees. Assessee has to register via online portal of Automation of Central Excise and Service Tax (ACES) or can utilise the services Certified Facilitation Centres (CFCs) set up by Company Secretaries in practice under the (ACES) project of Central Board of Excise and Custom.

Assessee has to fill Form ST-1 for registration and thereafter submit the following documents as specified in Order No.2/2011 dated 13-12-2011:

- Copy of Permanent Account number (PAN);
- Proof of residence
- Constitution of applicant other than individuals at the time of filing an application for registration.
- Power of attorney in respect of authorized person.

Registration where the services are provided or received from more than one premises and having centralised accounting system in one or more premises:

Where a person, liable for paying service tax on a taxable service

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or,
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised *billing or centralised accounting systems are located*.

The registration under this case shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located.

Registration where the services are provided or received from more than one premises and not having centralised accounting system:

Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

Single Registration for Multiple Services

Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

Issue of Registration Certificate

The Superintendent of Central excise is bound to grant a certificate of registration in Form ST-2 within 7 days of the date of receipt of the application or intimation for any change or additional information provided by the applicant. This certificate shall indicate the details of all the taxable services provided by the service provider. In case of transfer of business by the assessee to another person, the transferee is required to obtain a fresh Certificate of Registration.

Surrender of Certificate of Registration

The registered assessee who ceases to provide the taxable services for which he had been registered shall surrender his Certificate of Registration to the concerned Superintendent of Central Excise.

Service Tax Registration of Special Category of Persons

Input Service Distributor

Service Tax (Registration of Special Category of Persons) Rules, 2005 have come into effect on 16th day of June, 2005.

Registration under these rules can be obtained by an input service distributor by making an application to the jurisdictional Superintendent of Central Excise in such form as specified by the Board within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later.

Small Scale Service Provider

A small scale service provider has been specified as any provider of taxable service whose aggregate value of taxable service in a financial year does not exceeds a certain specified limit. A small scale service provider whose aggregate value of taxable service in a financial year exceeds nine lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakh rupees.

However, a small scale service provider are not liable to pay service tax till they cross the exemption limit of ₹10 lakhs during a Financial Year.

Test Your Knowledge



(1) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds _____ shall make an application for registration to the jurisdictional Superintendent of Central Excise.

- (a) ₹3,00,000
- (b) ₹5,00,000
- (c) ₹7,00,000
- (d) ₹9,00,000

PAYMENT OF SERVICE TAX

As per Section 68(1), every person providing taxable services i.e. provider of taxable service is liable to pay service tax at the rate specified in section 66B of the Finance Act, 1994 in such manner and within such period as may be prescribed.

Section 68(2), provides that in respect of the taxable services notified by the Central Government the service tax thereon shall be paid by such person as may be prescribed. Notification No. 30/2012 dated 20th June 2012 provides for the services where service tax shall be paid by service receiver or in some case by both i.e. service receiver and service provider. The mechanism under which liability for payment of service tax is on the service receiver is known as **reverse charge**. Under this charge service receiver has to register himself under service tax. Further service receiver cannot claim general exemption limit of ₹ 10 Lakhs and he is liable to pay service tax even on small amount.

Below is the list of services covered under Reverse charge mechanism along with the share of service provider and share of service recipient on which they are required to pay service tax.

<i>Sl.No.</i>	<i>Description of a Service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by the person receiving the service</i>
1	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	Services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	Services provided or agreed to be provided by way of sponsorship	Nil	100%
4	Services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	Services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	Services provided or agreed to be provided by way of support service by Government or local authority excluding renting of immovable property and services specified in section 66D(a) (i), (ii) & (iii)	Nil	100%
7	(a) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on abated value to any person who is not in the similar line of business.	Nil	100%
	(b) In respect of services provided or agreed to be provided by way of renting or hiring		

	any motor vehicle designed to carry passenger on non abated value any person who is not in the similar line of business.	60%	40 %
8.	Services provided or agreed to be provided by way of supply of manpower for any purpose including security services	25%	75 %
9.	Services provided or agreed to be provided by way of works contract	50%	50%
10.	Any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%
11.	Services provided or agreed to be provided by a director of a company to the said company	Nil	100%

INCIDENCE TO PAY SERVICE TAX

With effect from 1st July 2011, the liability to pay service tax was shifted from receipt basis to accrual basis with the introduction of Point of Taxation (POT) Rules, 2011. As per rule 3 of POT rules the liability to pay service tax shall arise upon issuance of invoice or receipt of payment whichever is earlier.

Proviso to Rule 6 of Service Tax Rules, 1994 has provided that in case of the individuals and partnership firms having an aggregate value of taxable services provided from one or more premises of ₹ 50 lakhs or less in the previous financial year, shall have the option to pay service tax upon receipt basis upto ₹ 50 lakhs in the current financial year.

The basic purpose for introduction of Point of Taxation Rules, 2011 is to bring clarity and certainty in matter of levy and collection of service tax in situations of:

- Change of rate of service tax
- Imposition of service tax on new services
- Continuous supply of services

Moreover, POT rules, 2011 have been introduced to bring synchronization between service tax and other taxes like Excise Duty and VAT which work on accrual basis and this is a step towards implementation of GST.

POT rules, 2011 were issued by the Central Government vide Notification No. 18/2011- ST dated 1st March, 2011 w.e.f. 1st April 2011. However, these rules were made effective w.e.f. 1st July 2011 vide Notification No.25/2011-ST dated 31st March 2011. Now, let us discuss the provisions of these rules:

Point of taxation means the point in time when a service shall be provided or deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.

As per rule 2A of POT Rules, "Date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when—
- (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
 - (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
 - (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression “date of payment” shall be construed to mean such date on which the payment is received”.

As per Rule 3 of Point of Taxation Rules, Point of taxation shall be;

- (a) the time when the invoice for service provided or to be provided is issued or
- (b) in case where payment is received before the issue of invoice then the time when such payment is received or
- (c) where advance is received by the service provider the time of receipt of such advance.

Rule 4A of the Service Tax Rules, 1994, provides that every person providing taxable service shall issue invoice within 30 days of completion of service or receipt of payment of service whichever is earlier.

Further proviso to Rule 3 of POT Rules, provides that where the invoice is not issued within 30 days of completion of service than the point of taxation shall the date of completion of such service.

Examples:

S. No.	Date of Completion of service	Date of Invoice	Date on which payment is received	Point of taxation	Remarks
1	April 10, 2012	April 20, 2012	April 30, 2012	April 20, 2012	Invoice is issued within 30 days and before payment
2	April 10, 2012	May 26, 2012	April 30, 2012	April 10, 2012	Invoice not issued within 30 days and payment received after completion of service
3	April 10, 2012	April 20, 2012	April 15, 2012	April 15, 2012	Invoice is issued within 30 days and payment received before issue of invoice
4	April 10, 2012	May 26, 2012	April 5, 2012 (Part) and April 25, 2012 (remaining)	April 5, 2012 and April 10, 2012 for remaining	Advance received in part before completion of service and invoice not issued within 30 days of completion of service.

Continuous Supply of Service

“Continuous supply of service” means any service provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time. Further, Central Government may notify provision of a particular service to be considered as continuous supply of service.

The following services have been notified vide Notification No. 28/2011 as continuous supply of service irrespective of period for which they are provided or to be provided;

- Telecommunication service
- Commercial or Industrial Construction Service
- Construction of Residential Complex
- Internet Communication
- Works contract services

As per Rule 3, in case of continuous supply of service, the point of taxation shall be the date of completion of the events as specified in the contract or time when invoice for the service provided or to be provided is issued or the date on which payment is received whichever is earlier. Where any advance is received by the service provider the point of taxation shall be date of receipt of each such advance. Further, where the invoice is not issued within 30 days of completion of such event then point of taxation shall be the date of completion of such event.

Point of Taxation in case of change in effective rate of tax (Rule 4)

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

- (a) in case a taxable service has been provided before the change in effective rate of tax,-
 - (i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
 - (ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
 - (iii) where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;
- (b) in case a taxable service has been provided after the change in effective rate of tax,-
 - (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or
 - (ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
 - (iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax , the point of taxation shall be date of issuing of invoice.

“Change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder.

Point of Taxation where Service is Taxed First Time (Rule 5)

Where a service is taxed for the first time, then, –

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

Point of Taxation in case of Specified Services or Persons (Rule 7)

The point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Determination of Point of Taxation in case of intangibles (Rules 8)

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time;

- when a payment in respect of such use or the benefit is received by the provider in respect thereof, or
- an invoice is issued by the provider, whichever is earlier.

Determination of Point of Taxation based on best judgement (Rule 8A)

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

DUE DATE FOR PAYMENT OF SERVICE TAX

Rule 6(1) of the Service Tax Rules, 1994 specifies the time period for payment of service tax.

For individuals or proprietors or partnership firms:

The service tax shall be paid to the credit of the Central Government **by the 5th of the month immediately following the respective quarter** in which service is deemed to have been provided as per POT Rules made in this regard.

Where payment is made through internet banking, such e-payment can be made **by 6th of the month immediately following the respective quarter.**

However, for the quarter ending 31st March, the due date of payment of service tax shall be 31st March.

As stated earlier, individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have option to pay the service tax on receipt basis by the due dates upto ₹50 lakhs in the current financial year.

For others

The service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the calendar month in which service is deemed to have been provided.

Mandatory e-payment of service tax

Under proviso to Rule 6(2), e-payment of service tax is mandatory for the assessee, who has paid service tax of rupees 10 lakh (cash plus Cenvat credit) and above in the preceding financial year shall be deposit the service tax liable to be paid by him electronically, through internet banking.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax is payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.

Deposit of Service Tax

The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs in Form GAR – 7 challan.

Test Your Knowledge



- (2) Where payment for service tax is made through internet banking, such e-payment can be made by the _____ of the month, immediately following the quarter in which the payments are received.
- (a) 5th
 - (b) 6th
 - (c) 8th
 - (d) 10th

Interest on Delayed Payment of Service Tax under Section 75

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.

However where the service provider whose taxable services does not exceed ₹60 lakhs during any of the financial years covered by the notice or during the last financial year the rate of interest shall be reduced by 3% p.a.

ADJUSTMENT OF SERVICE TAX

(1) Adjustment of excess service tax paid on the services which are not so provided

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee,

- (a) has refunded the payment or part thereof, so received along with the service tax payable thereon for the service to be provided by him to the person from whom it was received;
- (b) has issued a credit note for the value of the service tax not so provided to the person to whom such an invoice had been issued.

(2) Adjustment of excess service tax paid in other cases

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.

The adjustment of excess amount paid, shall be subject to the conditions that the excess amount is paid on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

VALUATION OF TAXABLE SERVICES

Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:

- Service tax is separately charged in the bill
- Bill value is inclusive of service tax

Where the service tax is separately charged in the bill:

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

Where the bill is inclusive of service tax:

Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. In this case, value of taxable services shall be calculated as follows:

$$\text{Value of taxable Services} = \frac{\text{Gross Amount} \times 100}{100 + \text{Applicable rate of service tax}}$$

Example:

Pawan rendered a taxable service to a client on 25-08-2012. A bill of ₹ 40,000 was raised on 29-08-2012; ₹15,000 was received from the client on 1-10-2012 and the balance on 23-10-2012.

- (a) If service tax was separately charged in the bill, what is the value of taxable services and service tax payable?
- (b) No Service tax was separately charged in the

- Is Pawan liable to pay service tax, even though the same has not been charged by him?
- In case, she is liable, what is the value of taxable services and service tax payable?

Solution

The bill is raised on 29-08-2012 but the payment is received in October 2012. As per Point of Taxation Rules, service tax shall be payable on or before 05-09-2012 or 06-09-2012 and not in October when payment is received.

Therefore, in this case service tax shall be payable as;

(a) Value of taxable service is ₹ 40,000, therefore service tax shall be payable @12% Plus Education @2% and SHEC@1%.

Service tax = ₹40,000 × 12.36% = ₹ 4944/-

(b) Pawan is liable to pay service tax even though the tax has not been collected by him. The service tax payable shall be;

= 40,000 × 12.36/112.36 = ₹ 4400/-

ABATEMENT IN SERVICE TAX

Abatement in Service Tax is a major relief to certain kinds of services which are chargeable to service tax. Finance Act 1994 provides that for determining value of service tax on which service tax is to be charged abatement in value determination is allowed.

Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.

Notification No. 26/2012- ST dated 20/06/2012 provides the list of services on which abatement is allowed. It also provides for the percentage on which service tax is payable under the scheme of abatement. The concept of abatement may be understood with the help of this example;

As per notification no. 26/2012, railway is require to charge service tax only on 30% value of the Taxable services. Thereby by virtue of this provision, if railways receive an amount of ₹ 50 Lakhs against the services, it needs to pay service tax only on ₹ 15 Lakhs i.e. 30% value of ₹ 50 Lakhs.

RECORDS TO BE MAINTAINED

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-
 - (a) providing of any service,
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business;

All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

The records including computerised data, as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

RETURNS UNDER SERVICE TAX

Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form TR-6/GAR-7, in triplicate for the months covered in the half-yearly return.

Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. Every assessee is required to file return electronically.

Vide Notification No. 43/2011 dt. 25th August 2011, every Assessee shall submit a half yearly return electronically. Assessee can file service tax return online at registering at <https://www.aces.gov.in>.

With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.

Revision of Returns

As per Rule 7B, an assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7.

Penalty for not filing and late Filing of Return

If return of service tax is not filed within the prescribed period penalty is leviable under section 77(2) which can be upto ₹10,000.

Rule 7C of Service Tax Rules, 1994 provides for penalty for delay in filing of service tax return. Accordingly late fee is payable as follows:

Delay upto 15 days	₹ 500/-
Delay beyond 15 days and upto 30 days	₹ 1,000/-
Delay beyond 30 days	₹1,000 + ₹ 100/- per day subject to a maximum of ₹ 20,000/ [the penalty prescribed in section 70(1)]

Penalty for late filing of return is specifically prescribed in Rule 7C subject to section 70 therefore if late fee is paid then no penalty prescribed under section 77(2) shall be leviable.

PENALTIES AND PROSECUTION

Various penalties have been provided under the Act. Section 83A empowers Central Excise Officer to adjudicate penalty within such powers as may be conferred by CBEC, by issuing a notification.

(A) PENALTY FOR FAILURE TO PAY SERVICE TAX [SECTION 76]

Any person who fails to pay service tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than;

- one hundred rupees for every day during which such failure continues; or
- at the rate of one per cent. of such tax, per month, whichever is higher, starting with the first day

after the due date till the date of actual payment of the outstanding amount of service tax.

Provided that the total amount of the penalty payable in terms of this section shall not exceed 50% of the service tax payable.

Example

X, an assessee, fails to pay service tax of ₹10 lakhs payable by 5th March. X pays the amount on 15th March. The default has continued for 10 days. The penalty payable by X is computed as follows:-

- 1% of the amount of default for 10 days = $1 \times 10,00,000 \times 10/31 = ₹3,225.80$ or
- Penalty calculated @ ₹100 per day for 10 days = ₹1,000

Penalty liable to be paid is ₹ 3,226.00.

(B) PENALTY FOR CONTRAVENTION OF RULES AND PROVISIONS OF ACT FOR WHICH NO PENALTY IS SPECIFIED ELSEWHERE [SECTION 77]

- (a) Any person who is liable to pay service tax, or required to take registration, fails to take registration shall be liable to pay a penalty which may extend to **ten thousand rupees**.
- (b) Any person who fails to keep, maintain or retain books of account and other documents shall be liable to a penalty which may extend to **ten thousand rupees**.
- (c) Any person who fails to —
 - (i) furnish information called by an
 - (ii) produce documents called for by a Central Excise Officer
 - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to;
 - ten thousand rupees or
 - two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.
- (d) Any person who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (e) Any person who issues invoice with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (f) Any person, who contravenes any of the provisions or any rules for which no penalty is separately provided, shall be liable to a penalty which may extend to **Ten thousand rupees**

(C) PENALTY FOR SUPPRESSING VALUE OF TAXABLE SERVICE [SECTION 78]

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or

- (d) suppression of facts; or
- (e) contravention of any of the provisions or of the rules with intent to evade payment of service tax the person shall be liable to pay service tax or erroneous refund, and

shall be liable to pay a penalty, in addition to such service tax and interest which shall equal to the amount of service tax so not levied or short-paid or erroneously refunded.

However the amount of penalty shall be reduced to:

- (a) 50% where true and complete details of the transactions are available in the specified records.
- (b) 25% where true and complete details of the transactions are available in the specified records and the amount of service tax, interest and penalty has been paid within 30 days.

In case of service providers whose taxable value of service tax does not exceed ₹ 60 lakhs, the period of 30 days shall be extended to 90 days.

Section 78 provides that if penalty is applicable under this section, provisions section 76 shall be apply. Thus, the assessee is relieved from effects of dual penalty.

(D) PENALTY FOR OFFENCES BY DIRECTOR, ETC., OF COMPANY [Section 78A]

Where a company has committed any of the following contraventions, namely:—

- (a) evasion of service tax; or
- (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or
- (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
- (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then
 - any director, manager, secretary or other officer of such company,
 - who at the time of such contravention was in charge of, and was responsible to,
 - the company for the conduct of business of such company and was knowingly concerned with such contravention,

shall be liable to a penalty which may extend to one lakh rupees.

WAIVER OR REDUCTION OF PENALTY

As per Section 80, penalty under Sections 76, 77 or first proviso to section 78 (1) can be waived if assessee proves that he had reasonable cause for the failure.

PROSECUTION

Section 89 was inserted by Finance Act, 2011 which provides for offences which can lead to prosecution. The prosecution was introduced in service tax to promote self compliance among the assessee. Further, sections 9A, 9AA, 9B, 9E and 34A of the Central Excise Act, 1944 have been made applicable service tax. These provisions together constitute the provisions relating to prosecution of offences.

CENVAT CREDIT RULES, 2004

The CENVAT Credit Rules, 2004 have replaced the existing Cenvat Credit Rules, 2002 and Service tax Credit Rules, 2002 with effect from 10th September 2004. The new Rules integrated services with goods. With the introduction of these rules, inter sectoral credit is allowed to be taken. Service tax paid on input service is allowed to be used for duty payable on final products removed. Similarly, excise duty paid on inputs is allowed to be used for paying service tax on output service.

Example:

Duty paid on raw plastic for the manufacture of plastic furniture is ₹ 20,000 and service tax paid on transportation i.e Goods Transport Agency of raw plastic of ₹ 10,000. The duty payable on the finished goods (plastic furniture) is ₹ 35,000 while paying the duty on plastic furniture; the manufacturer is allowed to deduct the amount already paid as excise duty and service tax (Input tax) on raw plastic. Thus, the net duty payable will be ₹5,000 only. Technically speaking, the manufacturer availed the cenvat credit to the extent of ₹ 30,000 that he paid on inputs and input service for manufacturing of plastic furniture.

Note: The provisions of CENVAT Credit Rules will be covered in detail at Professional Programme.

ROLE OF COMPANY SECRETARIES

There is a great scope for Company Secretaries in Practice in the area of service tax. A Practicing Company Secretary can render several services under the Service Tax such as;

- **Consultancy services:** The company secretaries can provide expertise services to their clients by explaining and interpreting the provisions of the transformed and upcoming legislations. For Example, the taxability of services shifted from selective approach to negative approach.
- **Compliance Services:** The Company Secretaries can help the client or employers to comply with the following procedural requirement:
 - (a) Registration
 - (b) Payment of tax
 - (c) Maintenance of books and records
 - (d) Availment and utilization of Cenvat Credit
 - (e) Submissions of service tax returns.
- **Certified Facilitation Centres (CFCs):** Company Secretaries in Practice can set up CFCs under the Automation of Central Excise and Service Tax Project of CBEC to provide procedural compliance services to the assesseees by charging fees.

LESSON ROUND UP

- Registration of service tax: Section 69 of the Finance Act, read with Rule 4 of the Service Tax Rules make provisions relating to registration. It is mandatory for every person liable to pay service tax to get registered with Superintendent of Central Excise. A person providing a taxable service is liable to pay service tax in terms of Section 68.
- An application for registration to the Superintendent of Central Excise can be made in form (ST-1). This is to be made within a period of thirty days from the date on which the service tax is leviable.
- Payment of service tax: With effect from 1st April 2011, Finance Act, 2011 introduced Point of Taxation (POT) Rules, 2011. These rules laid down the provisions relating to payment of service tax on accrual basis

instead of receipt basis and specify the relevant date for determining rate of service tax. Point of taxation means the point in time when a service shall be deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.

- Reverse charge- As per Section 68, every person providing taxable services i.e. provider of output service is liable to pay service tax. But in special cases service receiver is liable to pay service tax. This is known as reverse charge. Under this charge service receiver has to register himself under service tax. Further service receiver can not claim general exemption limit of 10 Lakhs rupees and he is liable to pay service tax even on small amount.
- Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:
 - Service tax is separately charged in the bill
 - Bill value is inclusive of service tax
- Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.
- Adjustment of Service tax: Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.
- Maintenance of Accounts: Every assessee is required to furnish to the Superintendent of Central Excise at the time of filing his return for the first time, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.
- Filing of return: Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form GAR -7, in triplicate for the months covered in the half-yearly return. Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.
- E-filing of return: With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.
- Interest on late payment of service tax: Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.
- **Doctrine of unjust enrichment:** Since service tax is indirect tax, it is recoverable from customer. If you recover the amount from customer and again claim refund, you will get double benefit. Hence, provision of 'unjust enrichment' has been made in the law. As per the doctrine of unjust enrichment, refund will be granted to assessee only if assessee had not passed on the tax burden to your customer/client. It will be presumed that assessee has passed on the burden of service tax.
- Penalties: Various penalties have been provided under the Act. The penalties can be imposed by Central Excise Officers. There is no provision for prosecution under the Act.
- Role of Company Secretaries: The educational background, knowledge, training and exposure that a Company Secretary has, makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms etc.

SELF TEST QUESTIONS

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

MULTIPLE CHOICE QUESTIONS

Choose the most appropriate answer from the given options in respect of the following:

1. What would be the value of taxable service, if gross amount charged by a service provider on 5th March, 2012 is ₹ 9,000 –
 - (a) ₹8,010
 - (b) ₹ 8,160
 - (c) ₹9,000
 - (d) ₹8,100.

2. If Radha has collected any amount of service tax from Bholu which is not required to be collected, Radha shall pay the amount so collected to –
 - (a) Bholu
 - (b) The Central Government
 - (c) Keep it with himself
 - (d) None of the above.

3. E-payment of service tax is compulsory in the case of an assessee who had paid service tax in the preceding financial year equal to at least –
 - (a) ₹10 lakh
 - (b) ₹ 40 lakh
 - (c) ₹ 50 lakh
 - (d) No limit

4. Upto what amount, the value of all taxable services provided by a service provider during a financial year is exempt from payment of service tax –
 - (a) ₹4 lakh
 - (b) ₹ 8 lakh
 - (c) ₹10 lakh
 - (d) ₹12 lakh.

5. If a corporate assessee has paid ₹ 15,000 as excess service tax during the previous half-year ending period, this excess amount can be adjusted against its subsequent tax liability –
 - (a) Equally every month
 - (b) Equally per quarter
 - (c) Equal to the service tax liability
 - (d) Equally on half-yearly basis.

TRUE AND FALSE

1. Recovery and adjustment of service tax means the same thing.
2. Return of service tax is required to be filed by every assessee in Form No. ST 3

3. Registration is mandatory under the service tax.
4. No service tax is payable on free services.

FILL IN THE BLANKS

1. Maximum amount of penalty for late filing of service tax return is _____.
2. Under service tax rules, every assessee is required to furnish to _____ at the time of filing his return for the first time a list of all accounts maintained in relation to the service tax.
3. Service tax return can be revised within a period of _____ from the date of submission of return.
4. The application for registration shall be made within a period of _____ of commencement of business by an input service provider.
5. The registration certificate is issued to a service provider within 7 days by the _____.
6. Due date for payment of service tax in the case of individual assessee is _____ immediately following the quarter of the financial year except in case of last quarter.

ELABORATIVE

1. What are the various provisions relating to payment of service tax? Explain.
2. What are the provisions regarding penalties under service tax in the following cases :
 - (a) Failure to take registration.
 - (b) Failure to keep books of account.
 - (c) Failure to produce accounts and documents.
3. "The value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him". In the light of this statement, explain how the value of taxable service is determined.
4. Briefly state the provisions relating to the procedure of registration under the service tax.
5. What are the due dates for payment of service tax by different assessees ?
6. Indicate the amount of interest payable for late payment of service tax and the amount of penalty payable for late filing of return of service tax.
7. Explain the provisions regarding submission of return under service tax.
8. What is the basis of calculation of service tax payable ? Explain the provisions governing valuation of taxable services.
9. "Service tax is generally payable by the service provider, but there are certain situations in which service receiver is liable to pay service tax." Explain.
10. Discuss 'advance ruling in service tax'.
11. Explain the provisions regarding service tax on Company Secretaries.

ANSWERS/HINTS

Multiple Choice Questions

1. (a); 2. (b); 3. (a); 4. (c); 5. (c)

True and False

1. False; 2. False; 3. False; 4. True;

Fill in the blanks

1. ₹20,000; 2. Superintendent of Central Excise; 3. 90 Days; 4. 30 Days; 5. Superintendent of Central Excise; 6. 5th of the month;

Test Your Knowledge

1. ₹9,00,000
2. 6th

SUGGESTED READINGS

1. Dr. V.K. Singhania : Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
2. Girish Ahuja and Ravi Gupta : Systematic Approach to Income-tax and Sales-tax; Bharat Law House, New Delhi.
3. Service Tax Manual: Taxmann

Annexure**CIRCULAR AND LIST OF ACCOUNTING CODES OF SERVICES****Circular No.165/16/2012 -ST**

F.No.341/21/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Tax Research Unit

146-F, North Block,
New Delhi, 20th November, 2012

To

Chief Commissioners of Central Excise and Customs (All), Director General (Service Tax), Director General (Systems), Director General (Central Excise Intelligence), Director General (Audit), Commissioners of Service Tax (All), Commissioners of Central Excise (All), Commissioners of Central Excise and Customs (All)

Madam/Sir,

Subject: Restoration of service specific accounting codes for payment of service tax - regarding

Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. Accounting code for the purpose of payment of service tax under the Negative List approach ["All Taxable Services" – 00441089] was prescribed vide Circular 161/12/2012 dated 6th July, 2012.

2. Subsequent to the issuance of the Circular, suggestions were received from the field formations that the service specific old accounting codes should be restored, for the purpose of statistical analysis; also it was suggested that list of descriptions of services should be provided to the taxpayers for obtaining registration. These suggestions were examined and a decision has been taken to restore the service specific accounting codes. Accordingly, a list of 120 descriptions of services for the purpose of registration and accounting codes corresponding to each description of service for payment of tax is provided in the annexure to this Circular.

3. Descriptions of taxable services given in the annexure are solely for the purpose of statistical analysis. On the advice of the office of the C & AG, a specific sub-head has been created for payment of "penalty" under various descriptions of services. Henceforth, the sub-head "other receipts" is meant only for payment of interest payable on delayed payment of service tax. Accounting Codes under the sub-head "deduct refunds" is not to be used by the taxpayers, as it is meant for use by the field formations while allowing refund of tax.

4. Registrations obtained under the positive list approach continue to be valid. New taxpayers can obtain registrations by selecting the relevant description/s from among the list of 120 descriptions of services given in the Annexure. Where registrations have been obtained under the description 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure. If any applications for amendment of ST-1 are pending with field formations, seeking the description 'all taxable services', such amendment may not be necessary and the officers in the field formations may provide necessary guidance to the taxpayers in this regard. Directorate General of Systems will be making necessary arrangements for display of the list of 120 descriptions of services and their corresponding Accounting Codes in Form ST-1 and Form ST-2 as may be necessary.

5. Officers in the field formations are instructed to extend necessary guidance to the tax payers regarding the selection of appropriate description of taxable service and facilitate the payment of service tax/cess due under the appropriate accounting code. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

(J.M.Kennedy)
Director, TRU
Tel: 011-23092634
Email: jm.kennedy@nic.in

ANNEXURE TO CBEC CIRCULAR No.165/16/2012-ST**DESCRIPTIONS OF TAXABLE SERVICES AND ACCOUNTING CODES FOR
PAYMENT OF SERVICE TAX**

1	(a)	Stockbroker service	00440008	00440009	00441298	00440121
*	(b)	Telegraph authority-telephone connection [(b) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440003	00440119	00441296	00440122
*	(c)	Telegraph authority-pager[(c) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440015	00440020	00441301	00440021
2	(d)	General insurance service	00440005	00440006	00441297	00440120
3	(e)	Advertising agency services	00440013	00440016	00441299	00440017
4	(f)	Courier agency service	00440014	00440018	00441300	00440019
5	(g)	Consulting engineer services	00440057	00440058	00441310	00440059
6	(h)	Custom House Agent service	00440026	00440027	00441302	00440028
7	(i)	Steamer agent services	00440029	00440030	00441303	00440031
8	(j)	Clearing and forwarding agent services	00440045	00440046	00441306	00440047
9	(k)	Manpower recruitment/supply agency service	00440060	00440061	00441311	00440062
*	(ka)	Goods Transport Operator [This description is not to be used since omitted and clubbed under (zpz)]	00440067	00440068	00441313	00440069
10	(l)	Air travel agent services	00440032	00440033	00441304	00440034
11	(m)	Mandap keeper service	00440035	00440036	00441305	00440037
12	(n)	Tour operator services	00440063	00440064	00441312	00440065
13	(o)	Rent-a-cab scheme operator services	00440048	00440049	00441307	00440050
14	(p)	Architect services	00440072	00440073	00441314	00440074
15	(q)	Interior decoration/ Designer services	00440076	00440077	00441315	00440078
16	(r)	Management or business consultant service	00440116	00440117	00441325	00440118
17	(s)	Chartered accountant services	00440092	00440093	00441319	00440094
18	(t)	Cost accountant service	00440096	00440097	00441320	00440098
19	(u)	Company secretary service	00440100	00440101	00441321	00440102
20	(v)	Real estate agent service	00440104	00440105	00441322	00440106

21	(w)	Security/ detective agency service	00440108	00440109	00441323	00440110
22	(x)	Credit rating agency service	00440088	00440089	00441318	00440090
23	(y)	Market research agency service	00440112	00440113	00441324	00440114
24	(z)	Underwriter service	00440084	00440085	00441317	00440086
*	(za)	Mechanised slaughterhouse service [omitted vide Finance Act, 2001]	00440080	00440081	00441316	00440082
25	(za)	Scientific & technical consultancy services	00440125	00440126	00441326	00440127
26	(zb)	Photography service	00440129	00440130	00441327	00440131
27	(zc)	Convention service	00440133	00440134	00441328	00440135
*	(zd)	Telegraph authority – leased circuit [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440137	00440138	00441329	00440139
*	(ze)	Telegraph authority – telegraph service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440141	00440142	00441330	00440143
*	(zf)	Telegraph authority – telex service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440145	00440146	00441331	00440147
*	(zg)	Telegraph authority – facsimile service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440149	00440150	00441332	00440151
28	(zh)	Online information and database access service and/ or retrieval service through computer network	00440153	00440154	00441333	00440155
29	(zi)	Video production agency/ video tape production service	00440157	00440158	00441334	00440159
30	(zj)	Sound recording studio or agency services	00440161	00440162	00441335	00440163
31	(zk)	Broadcasting service	00440165	00440166	00441336	00440167
32	(zl)	Insurance auxiliary service in relation to general insurance	00440169	00440170	00441338	00440171
33	(zm)	Banking and other Financial services	00440173	00440174	00441339	00440175
34	(zn)	Port service (major ports)	00440177	00440178	00441341	00440179

35	(zo)	Service for repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle[(zzj) omitted w.e.f 16.6.05]	00440181	00440182	00441343	00440183
*	(zp)	Body corporate other than banks in relation to banking and other financial services [omitted w.e.f. 10.09.04 and clubbed under (zm)]	-----	-----	-----	-----
36	(zq)	Beauty parlours /beauty treatment	00440209	00440210	00441361	00440211
37	(zr)	Cargo handling service	00440189	00440190	00441348	00440191
38	(zs)	Cable operators	00440217	00440218	00441366	00440219
39	(zt)	Dry cleaning service	00440221	00440222	00441369	00440223
40	(zu)	Event management	00440197	00440198	00441353	00440199
41	(zv)	Fashion design	00440213	00440214	00441363	00440215
42	(zw)	Health club and fitness centre service	00440205	00440206	00441358	00440207
43	(zx)	Life insurance service	00440185	00440186	00441346	00440187
44	(zy)	Insurance auxiliary service concerning life insurance business	00440185	00440186	00441346	00440187
45	(zz)	Rail travel agent's service	00440201	00440202	00441356	00440203
46	(zza)	Storage and warehousing services	00440193	00440194	00441350	00440195
47	(zzb)	Business auxiliary service	00440225	00440226	00441371	00440227
48	(zcc)	Commercial training or coaching	00440229	00440230	00441374	00440231
49	(zcd)	Erection, commissioning and installation	00440233	00440234	00441376	00440235
50	(zce)	Franchise service	00440237	00440238	00441384	00440239
51	(zcf)	Internet café	00440241	00440242	00441386	00440243
52	(zcg)	Maintenance or repair service	00440245	00440246	00441388	00440247
53	(zch)	Technical testing and analysis service	00440249	00440250	00441389	00440251
54	(zci)	Technical inspection and certification agency service	00440249	00440250	00441389	00440251
*	(zjj)	Authorised service station [omitted w.e.f 16.6.05 and clubbed under (zo)]	-----	-----	-----	-----

55	(zzk)	Foreign exchange broker service	00440173	00440174	00441339	00440175
56	(zzl)	Other port (minor port) service	00440177	00440178	00441341	00440179
57	(zzm)	Airport services by airport authority	00440258	00440259	00441391	00440260
58	(zzn)	Transport of goods by air	00440266	00440267	00441393	00440268
59	(zzo)	Business exhibition service	00440254	00440255	00441390	00440256
60	(zzp)	Transport of goods by road/goods transport agency service	00440262	00440263	00441392	00440264
61	(zzq)	Construction services other than residential complex, including commercial/industrial buildings or civil structure	00440290	00440291	00441399	00440292
62	(zzr)	Services by holder of intellectual property right providing intellectual property services other than copyright	00440278	00440279	00441396	00440280
63	(zsz)	Opinion poll agency service	00440274	00440275	00441395	00440276
64	(zzt)	Outdoor catering	00440051	00440052	00441308	00440053
65	(zzu)	Services by a programme producer	00440286	00440287	00441398	00440288
66	(zzv)	Survey and exploration of mineral	00440270	00440271	00441394	00440272
67	(zzw)	Pandal or shamiana service	00440054	00440055	00441309	00440056
68	(zzx)	Travel agent for booking of passage(other than air/rail travel agents)	00440294	00440295	00441400	00440296
69	(zzy)	Services provided by recognised/registered associations in relation to forward contracts	00440282	00440283	00441397	00440284
70	(zzz)	Transport of goods through pipeline or other conduit	00440302	00440303	00441430	00440304
71	(zzza)	Site formation and clearance, excavation, earth moving and demolition services	00440306	00440307	00441431	00440308
72	(zzzb)	Dredging of rivers, ports harbours, backwaters, estuaries, etc.	00440310	00440311	00441432	00440312
73	(zzzc)	Survey and map making service	00440314	00440315	00441433	00440316

74	(zzzd)	Cleaning services	00440318	00440319	00441434	00440320
75	(zzze)	Club or association service	00440322	00440323	00441435	00440324
76	(zzzf)	Packaging service	00440326	00440327	00441436	00440328
77	(zzzg)	Mailing list compilation and mailing service	00440330	00440331	00441437	00440332
78	(zzzh)	Construction of residential complex service	00440334	00440335	00441438	00440336
79	(zzzi)	Service provided by a registrar to an issue	00440338	00440339	00441439	00440340
80	(zzzj)	Service provided by a share transfer agent	00440342	00440343	00441440	00440344
81	(zzzk)	Automated Teller Machine operations, maintenance or management service	00440346	00440347	00441441	00440348
82	(zzzl)	Service provided by a recovery agent	00440350	00440351	00441442	00440352
83	(zzzm)	Selling of space or time slots for advertisements	00440354	00440355	00441443	00440356
84	(zzzn)	Sponsorship service provided to body-corporate or firm including sports sponsorships	00440358	00440359	00441444	00440360
85	(zzzo)	Transport of passengers embarking on domestic/ international journey by air	00440362	00440363	00441445	00440364
86	(zzzp)	Transport of goods by rail including transport of goods in containers by rail (for the present, transport of passengers by rail in air-conditioned class/first class also may be paid under this description/accounting code)	00440390	00440391	00441446	00440392
87	(zzzq)	Business support service	00440366	00440367	00441447	00440368
88	(zzzr)	Auction service	00440370	00440371	00441448	00440372
89	(zzzs)	Public relation management service	00440374	00440375	00441449	00440376
90	(zzzt)	Ship management service	00440378	00440379	00441450	00440380
91	(zzzu)	Internet telecommunication services (includes internet telephony Service which became taxable from 01.05.2006)	00440382	00440383	00441451	00440384
92	(zzzv)	Transport of persons by cruise	00440386	00440387	00441452	00440388

		ship				
93	(zzzw)	Credit card, debit card, charge card or other payment card related services	00440394	00440395	00441453	00440396
94	(zzzx)	Services of telegraph authority in relation to telecommunication service	00440398	00440399	00441454	00440400
95	(zzzy)	Mining of mineral, oil or gas service	00440402	00440403	00441455	00440404
96	(zzzz)	Renting of immovable property services	00440406	00440407	00441456	00440408
97	(zzzza)	Works contract service	00440410	00440411	00441457	00440412
98	(zzzzb)	Development and supply of content for use in telecom services, advertising agency, etc.	00440414	00440415	00441458	00440416
99	(zzzzc)	Asset management including portfolio management and fund management	00440418	00440419	00441459	00440420
100	(zzzzd)	Design service other than interior decoration and fashion designing	00440422	00440423	00441460	00440424
101	(zzzze)	Information technology software service	00440452	00440450	00441461	00440451
102	(zzzzf)	Services provided by an insurer of life insurance under Unit Linked Insurance Plan(ULIP)	00440430	00440431	00441462	00440432
103	(zzzzg)	Services provided by a recognized stock exchange in relation to transaction in securities	00440434	00440435	00441463	00440436
104	(zzzzh)	Services provided by recognised/registered associations in relation to clearance or settlement of transactions in goods or forward contracts	00440438	00440439	00441464	00440440
105	(zzzzi)	Services provided by a processing and clearinghouse in relation to securities, goods and forward contracts	00440442	00440443	00441465	00440446
106	(zzzzj)	Services provided by any person in relation to supply of	00440445	00440447	00441466	00440448

		tangible goods				
107	(zzzzk)	Cosmetic and plastic surgery service	00440460	00440463	00441467	00440466
108	(zzzzl)	Transport of goods by coastal shipping (services by way of transportation of goods by inland waterways is placed in the negative list)	00440470	00440473	00441468	00440476
109	(zzzzm)	Legal consultancy service	00440480	00440483	00441469	00440486
110	(zzzzn)	Promotion, marketing, organizing or assisting in organizing games of chance including lottery, etc.	00440595	00440596	00441470	00440597
111	(zzzzo)	Health services by a clinical establishment, health check-up/diagnosis , etc.	00440598	00440599	00441471	00440600
112	(zzzzp)	Maintenance of medical records	00440601	00440602	00441472	00440603
113	(zzzzq)	Service of promotion or marketing of brand of goods/services/events	00440604	00440605	00441473	00440606
114	(zzzzr)	Service of permitting commercial use or exploitation of events	00440607	00440608	00441474	00440609
115	(zzzzs)	Electricity exchange service	00440610	00440611	00441475	00440612
116	(zzzzt)	Copyright service – transfer temporarily/ permit use or enjoyment	00440613	00440614	00441476	00440615
117	(zzzzu)	Special services provided by builders	00440616	00440617	00441477	00440618
118	(zzzzv)	Restaurant service	00441067	00441068	00441478	00441069
119	(zzzzw)	Service of providing accommodation in hotels, inn, guest house, club or campsite whatever name called.	00441070	00441071	00441479	00441072
120		Other taxable services [services other than the 119 listed above]	00441480	00441481	00441485	00441482

Note: In the above list, 119 descriptions of services (sl.no.1 to 119) are derived from positive list based selective approach and are arranged as they evolved; some of them have undergone change under the negative list approach. At serial number 120, the description reads as 'other taxable services' [services which are not covered by any of the 119 descriptions derived from positive list approach]. Descriptions of services listed above are meant for the purpose of collection of statistics.

EDUCATION CESS

<i>Sl.no</i>	<i>Description</i>	<i>Tax collection</i>	<i>Other receipts (interest)</i>	<i>Penalties</i>	<i>Deduct refunds</i>
1	Primary Education Cess	00440298	00440299	00441486	00440300
2	Secondary and Higher Education Cess	00440426	00440427	00441487	00440428

ALL TAXABLE SERVICES

<i>Description</i>	<i>Tax collection</i>	<i>Other receipts (interest)</i>	<i>Penalties</i>	<i>Deduct refunds</i>
All Taxable Services (registrations obtained under this description should be amended online by selecting appropriate description/s from the list of 120 descriptions given in this Annexure)	00441089	00441090	00441093	00441094